IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

Crl.MC.No. 3687 of 2003()

CRL.M.P.NO.3862/2002 IN CC.NO.232/2002 OF
THE CJM CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR

PETITIONER: PETITIONERS

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1. V.T.JOY, S/O. THOMAS,
   VAZHAPPILLY HOUSE, CHETTUPUZHA DESOM,
   PULLAZHI VILLAGE, THRISSUR DISTRICT.

2. SHEEJA JOY, W/O. JOY,
   VAZHAPPILLY HOUSE, CHETTUPUZHA DESOM,
   PULLAZHI VILLAGE, THRISSUR DISTRICT,
   REPRESENTED BY POWER OF ATTORNEY HOLDER V.T.JOY.

BY ADV. SRI.P.VIJAYA BHANU
SRI.TONY MATHEW

RESPONDENTS: RESPONDENTS

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1. STATE OF KERALA, REPRESENTED BY PUBLIC
   PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. K.P.ANTONY, S/O. POULOSE,
   KATTOOKARAN HOUSE, OLARIKKARA DESOM,
   ARANATTUKARA VILLAGE, THRISSUR DISTRICT.

BY ADV. SRI.GRASHIOUS KURIAKOSE
SRI.G.SREEKUMAR (CHELUR)
PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3687of 2003

Dated this the 25th day of May 2007

O R D E R

The petitioners have come to this court to assail Annexure F order passed by the learned Chief Judicial Magistrate, Thrissur in an application filed by them under Section 451 Cr.P.C. The second respondent herein is the accused in a crime registered under Sections 406 and 420 I.P.C. The crime was registered as Crime No.147/02 of Town West Police Station, Thrissur. Final report has already been filed and the case is pending as C.C.No.232/02, it is submitted. The police, in connection with that case had gone to the premises allegedly in the possession of the second respondent herein where he runs a jewellery. The premises have been sealed and the keys have been produced before the learned Chief Judicial Magistrate, Thrissur. The keys are available in the custody of the court, it is submitted.

2. The petitioners went before the learned Chief Judicial Magistrate. They are husband and wife. They contended that the premises which have been locked and the keys produced in

court really belong to them as per sale deed executed by the second respondent in their favour. They, therefore, prayed that the case may be returned to them.

3. The application was opposed by the second respondent. He contended that the petitioners do not really have any title or possession over the property in question and that documents happened to be executed by him in favour of the petitioners only under threat and duress. In these circumstances, the right, title and possession of the petitioners over the property in question was denied and disputed.

4. The learned Chief Judicial Magistrate considered the question in detail. The learned Chief Judicial Magistrate took note of the contentions of the second respondent that petitioners 1 and 2 have no title or possession over the property in question. The petition is under Section 451 Cr.P.C and the court is obliged only to consider the question as to who is the person entitled to keep possession of the property in question. The court took note of the disputed contentions regarding the document of title. The court noted that the police had taken over possession from the second respondent and the key of the premises was obtained by the police from the second respondent. There was no

explanation whatsoever as to how the key of the premises remained with the second respondent and not with the petitioners. It was, in these circumstances, that the learned Magistrate refused to return the key of the petitioners.

5. It is not necessary for me to express any authentic opinion on the validity of the title of the petitioners over the property in dispute. It is submitted before me that proceedings under the Insolvency Act have been initiated against the second respondent and the validity of the documents in favour of the petitioners 1 and 2 is seriously disputed in such proceedings. I take note of the reasons adopted by the court below. Reasons adopted do appear to me to be reasonable and cogent. The petitioners have not succeeded in indicating that the possession of the building and the keys were was taken over from them by the police and it is that crucial fact which tilted the case against the petitioners.

6. The view taken by the learned Magistrate - that the keys of the premises need not be returned to the petitioners does not at all appear to me to be incorrect or improper as to justify the invocation or the extraordinary inherent jurisdiction

available to this court under Section 482 Cr.P.C. I am, in these circumstances, satisfied that the impugned order does not deserve to be interfered with.

7. I do, however, note that it is submitted at the Bar that the case has not made any further progress. Case is seen numbered C.C.No.332/02. The impugned order has been passed as early as on 11/02/2002. I need only express the opinion that I expect the learned Magistrate to expeditiously complete the trial in C.C.No.332/02.

8. With the above observation, this Criminal Miscellaneous Case is dismissed. I make it clear that this order shall not fetter the powers of the petitioners to seek appropriate relief from the civil court.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.3687/03

ORDER

25TH DAY OF MAY 2007